

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O. O. C. J.

WRIT PETITION NO. 2039 OF 2003

Libio Francisco Colaco.

...Petitioner.

Versus

Air India Ltd. & Anr.

...Respondents.

.....

Mr. N.M. Ganguli with Ms. K.G. Poojari for the Petitioner.

Mr. S. K. Talsania, Senior Advocate i/b. M. V. Kini & Co. for  
Respondent No.1.

.....

**CORAM : DR. D.Y. CHANDRACHUD, J.**

July 19, 2006.

**P.C.:**

The Petitioner was a Traffic Assistant in Air India. An incident took place on 14<sup>th</sup> July 1988 when it is alleged that the Petitioner was apprehended at Sahar International Airport' Mumbai. Having purchased a ticket to travel to Singapore, it is alleged that the Petitioner was found in possession of Indian currency of Rs.6 lakhs. The Petitioner was arrested and released on bail. A chargesheet was issued to the Petitioner for disciplinary proceedings. The enquiry was held. The Petitioner was called upon to show cause against the findings of the enquiry and the Petitioner submitted his reply. The management by its order dated 7<sup>th</sup> October 1997 dismissed the Petitioner from service. Since a

Charter of Demands was pending before the National Industrial Tribunal at Mumbai, Air India moved the Tribunal for approval under Section 33(2)(b) of the Industrial Disputes Act, 1947. The Petitioner had in the meantime, sought a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947. In the course of the adjudication, the Tribunal by its Part-I award dated 11<sup>th</sup> September 2002 held that the enquiry was fair and proper and that the findings of the Enquiry Officer were not perverse. The question that remained to be adjudicated upon by the Tribunal was whether the punishment that was imposed upon the Petitioner was disproportionate to the gravity of misconduct. The Petitioner moved an application before the Tribunal on 7<sup>th</sup> April 2003 after the declaration of the Part-I award seeking that the proceedings be held in abeyance until the approval application was disposed of by the Tribunal. The Tribunal declined to stay further proceedings by its order dated 29<sup>th</sup> April 2003 which is impugned in these proceedings. The Tribunal, however, adjourned the proceedings to 30<sup>th</sup> June 2003 so that in the meantime, the approval application could be taken up for disposal. This petition was admitted by an order dated 15<sup>th</sup> September 2003 and the proceedings in the reference were stayed in the meantime. The Tribunal was directed

to dispose of the approval application within three months.

2. The Tribunal disposed of the application for approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 on 24<sup>th</sup> December 2003. The Tribunal declined to grant its approval. Counsel for the parties are agreed in stating before the Court that the order of the Tribunal was challenged by the management before this Court and that the order declining approval has been set aside. Consequently, the application for approval stands restored to the file of the Tribunal. The order passed by this Court setting aside the decision of the Tribunal on the approval application has been challenged in appeal and the appeal has been admitted, the Court is informed, without interim relief. Both the Counsel are agreed in making a statement to that effect before this court. In the event that the judgment of this Court is set aside in appeal, necessary consequences of an approval under Section 33(2)(b) being declined would ensue.

3. Mr. Talsania, Counsel appearing on behalf of the Management fairly states that in the event that the approval under Section 33(2)(b) is refused, the reference under Section 10 itself

would not survive in view of the decision in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Shri Ram Gopal Sharma**.<sup>1</sup> In the event that approval under Section 33(2)(b) is eventually refused, the order of dismissal will become void. The order of the Tribunal in a reference under Section 10 will, therefore, be subject to the order under Section 33(2)(b), in case approval is declined. Reference in this connection may be made to the judgment of the Supreme Court in **Engineering Laghu Udyog Employees' Union vs. Judge, Labour Court**.<sup>2</sup> At this stage, subject to the above, there is no hindrance in the Tribunal proceeding ahead with the conclusion of the reference. It would not be appropriate and proper that the reference which was made as far back as in 1999 should continue to remain pending on the file of the Tribunal. The Petitioner has also challenged the Part-I award before this Court in the present proceedings. Counsel appearing on behalf of the Petitioner, however, craves liberty to adopt appropriate proceedings in accordance with law, should it become necessary to do so after the disposal of the reference by the Tribunal. On the request of Counsel, it is clarified that upon the disposal of the reference, it would be open to the Petitioner, if so advised, to challenge the

---

<sup>1</sup> 2002 I CLR 789

<sup>2</sup> (2004) II CLR 942 (at para 13 p. 946)

Part-I award as well as the final award of the Tribunal.

4. In these circumstances, this petition is disposed of leaving it open to the Tribunal to conclude its adjudication in the reference and to pass final orders thereon after parties are heard. The final order in the reference under Section 10 will however, be subject to the consequences which ensue under the law in the event that approval under Section 33(2)(b) is declined. Parties shall appear before the Tribunal to receive directions on 28<sup>th</sup> August 2006.

....